

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

CAESAR RODNEY SCHOOL DISTRICT

Petitioner,

v.

CAESAR RODNEY EDUCATION  
ASSOCIATION, DSEA/NEA,

Respondent.

Review of the Decision Below  
Rep. Pet. 92-03-070 A

BACKGROUND

The Caesar Rodney School District (hereinafter "District") and the Caesar Rodney Education Association (hereinafter "Association") are engaged in a dispute the resolution of which is governed by the Public School Employment Relations Act ("the Act"), 14 Del.C. Chapter 40. On March 13, 1992, the Association filed a representation petition with the Delaware Public Employment Relations Board ("PERB") seeking to amend an existing bargaining unit of certified professional employees by including an unorganized group of instructional aides. The petition was verified as being supported by at least 30% of the petitioned for aides.

A hearing was held before the PERB on June 19, 1992, which was continued and concluded on August 17, 1992. The Executive Director issued the decision on December 8, 1992, concluding that:

...the petitioned for bargaining unit including all certified professional employees except administrators, and instructional aides of the Caesar Rodney School District is appropriate, as required by 14 Del.C. §4010(d) ...

The modified unit was ordered to include "All certified professional employees except administrators and all instructional aides". An election was ordered to be held within sixty (60) days of the Order to determine whether the previously unorganized group

of Instructional Aides did in fact desire to be represented by the Association for purposes of collective bargaining.

On January 15, 1993, the District appealed the December 8, 1992 decision of the Executive Director requesting that the Board grant full briefing and an opportunity to present oral argument before the Board for the purpose of supporting a reversal of that decision.

### DECISION

After a complete review of the entire record, including consideration of 14 Del.C. Chapter 40, the Public Employment Relations Board concludes that there is no basis on which to support either the appeal filed by the Caesar Rodney School District or the additional oral argument. The record already includes all exhibits of both parties; a transcript covering two (2) days of hearings; the Association's Opening Brief; the District's Answering Brief; the Association's Reply Brief; the District's Request for Review of the Executive Director's Decision and the Association's Response to the Request for Review. The Board concludes that both parties have had ample opportunity to present their respective positions and supporting data.

The Executive Director's decision fully sets forth the parties positions in this dispute (pp. 4 - 8) which need not be repeated here. The December 8th decision first considered whether the requested bargaining unit was appropriate and in so doing reviewed the statutory requirements of §4010(d). The Board supports the finding that "... The unit designated by the PERB need not be the only appropriate unit...", and that the Board has an obligation to rule on the appropriateness of the unit petitioned for by the employees. (p. 9)

The key determination then becomes whether the teachers qualify as supervisors since the PSERA requires that supervisory and nonsupervisory employees be placed in separate appropriate bargaining units. The Board finds the

Executive Director's discussion of the factors to be considered in making this determination under §4002(q) of the Act was thorough and complete and supported by the total record in this case. The DPI Instructional Aide certificate referenced by the District in its request for review is clearly not dispositive of the issue of supervisory status. Further, the Board rejects the District's assertion that the Executive Director erred in applying the supervisory exclusion too narrowly and finds that the weight of the evidence is sufficient to support the decision that the teachers do not qualify as supervisors of the instructional aides within the meaning of Act.

In reviewing the entire record, the Board finds that the factual conclusions reached are not inconsistent with the evidence and testimony presented. The record sufficiently supports the similarities of skills, duties and working conditions upon which the unit modification is based. The District has not established that clear factual error has occurred.

The Board does not agree with the District that the Executive Director's reliance upon the Kent Vo-Tech decision (Kent County Vocational Technical School District Special Education Instructional Aides, Del.PERB, Rep.Pet.No. 91-06-065 (1/30/92) is inapposite. A review of that case supports his conclusion that "... The instant case bears greater similarity to the situation in Kent Vo-Tech (Supra.) and the logic of that decision is compelling". (emphasis added)

The Board adopts the Executive Director's definition of an instructional aide, namely "... an instructional aide includes those aides whose primary responsibilities include the performance of curriculum oriented instructional assistance directly to students". The Executive Director accurately summarized the record and the Board's conclusion in this proceeding when he concluded his opinion by stating, "While these positions may also provide some clerical or administrative support to the professional teaching staff, it is clear that a majority of their time is spent

interacting with students as an integral part of an instructional team." Further, the inclusion of the Interpreter Aide within the unit based upon this definition of an Instructional Aide is consistent with and supported by the job description submitted by the District.

The December 8, 1992 decision of the Executive Director is, accordingly, wholly affirmed.

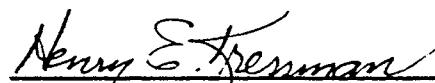
IT IS SO ORDERED.



ARTHUR A. SLOANE, Chair



R. ROBERT CURRIE, JR., Member



HENRY E. KRESSMAN, Member

DATE: February 16, 1993